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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

8 RICHARD CARL HOWARD II,

9 Petitioner,

Case No. C14-1854-RAJ-MAT

10 v.

REPORT AND RECOMMENDATION

11 STATE OF WASHINGTON,

12 Respondent.

13
14 INTRODUCTION AND SUMMARY CONCLUSION

15 Petitioner Richard Howard is a state prisoner who is currently confined at the Airway
16 Heights Corrections Center in Airway Heights, Washington. He has filed a petition for federal
17 habeas relief under 28 U.S.C. § 2254 seeking to challenge a 2012 judgment and sentence of the
18 King County Superior Court. The petition has not been served on respondent. Following a
19 careful review of the petition, and the balance of the record, this Court concludes that petitioner's
20 federal habeas petition should be dismissed without prejudice for failure to exhaust state court
21 remedies.

22 DISCUSSION

23 Petitioner identified in his federal habeas petition three grounds for relief from his 2012

1 King County Superior Court judgment and sentence. (*See* Dkt. 8 at 5-9.) Petitioner indicated
2 with respect to each claim that he had presented the claim to the Washington Court of Appeals
3 on direct appeal and/or on collateral review. (*See id.*) However, nowhere in his petition did
4 petitioner indicate that he had presented any of his claims to the Washington Supreme Court for
5 review. Because it appeared from the face of the petition that petitioner's claims were
6 unexhausted and therefore ineligible for federal habeas review this Court, on December 23,
7 2014, issued an Order directing petitioner to show cause why his petition should not be
8 dismissed. (Dkt. 7.) On January 5, 2015, petitioner submitted a response to the Order to Show
9 Cause, but nowhere in his response does petitioner address the exhaustion issue. (*See* Dkt. 10.)
10 Petitioner instead appears to argue the merits of the claims upon which he is seeking review.
11 (*Id.*)

12 As petitioner was advised in the Order to Show Cause, a state prisoner is required to
13 exhaust all available state court remedies before seeking a federal writ of habeas corpus. 28
14 U.S.C. § 2254(b)(1). The exhaustion requirement is a matter of comity, intended to afford the
15 state courts "an initial opportunity to pass upon and correct alleged violations of its prisoners'
16 federal rights." *Picard v. Connor*, 404 U.S. 270, 275 (1971)(internal quotation marks and
17 citations omitted). In order to provide the state courts with the requisite "opportunity" to
18 consider his federal claims, a prisoner must "fairly present" his claims to each appropriate state
19 court for review, including a state supreme court with powers of discretionary review. *Baldwin*
20 *v. Reese*, 541 U.S. 27, 29 (2004) (citing *Duncan v. Henry*, 513 U.S. 364, 365 (1995), and
21 *O'Sullivan v. Boerckel*, 526 U.S. 838, 845 (1999)). Because petitioner makes no showing that he
22 has presented any of his federal habeas claims to the Washington Supreme Court for review, this
23 Court concludes that petitioner's claims are unexhausted and are therefore ineligible for federal

1 habeas review.

2 CONCLUSION

3 For the foregoing reasons, this Court recommends that petitioner's federal habeas petition
4 and this action be dismissed without prejudice. A petitioner seeking post-conviction relief under
5 § 2254 may appeal a district court's dismissal of his federal habeas petition only after obtaining a
6 certificate of appealability (COA) from a district or circuit judge. A certificate of appealability
7 may issue only where a petitioner has made "a substantial showing of the denial of a
8 constitutional right." See 28 U.S.C. § 2253(c)(3). A petitioner satisfies this standard "by
9 demonstrating that jurists of reason could disagree with the district court's resolution of his
10 constitutional claims or that jurists could conclude the issues presented are adequate to deserve
11 encouragement to proceed further." *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003). Under the
12 above standard, this Court concludes that petitioner is not entitled to a certificate of appealability
13 in this matter. This Court therefore recommends that a certificate of appealability be denied. A
14 proposed order accompanies this Report and Recommendation.

15 DEADLINE FOR OBJECTIONS

16 Objections to this Report and Recommendation, if any, should be filed with the Clerk and
17 served upon all parties to this suit within **twenty-one (21) days** of the date on which this Report
18 and Recommendation is signed. Failure to file objections within the specified time may affect
19 your right to appeal. Objections should be noted for consideration on the District Judge's
20 motions calendar for the third Friday after they are filed. Responses to objections may be filed
21 within **fourteen (14) days** after service of objections. If no timely objections are filed, the

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1 matter will be ready for consideration by the District Judge on **February 27, 2015**.

2 DATED this 30th day of January, 2015.

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4 Mary Alice Theiler
5 Chief United States Magistrate Judge